

Products that qualify as medicines, drugs, or medical appliances are taxed at the reduced State sales tax rate of 1%. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

September 5, 2008

Dear Xxxxx:

This letter is in response to your letter dated July 30, 2008, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Our company sells prescribed respiratory medical devices for the treatment of sleep disordered breathing, such as CPAP Devices, Bi-Level Devices, Nasal Pillows System, Nasal Masks, Full Face Masks, Heated Humidifiers, Passive Humidifiers and so on.

Our question is: Are sales of those items subject to the low sales tax rate of 1%, or at the normal sales tax rate of 7.25%?

We have read the Department's regulation at 86 Ill. Adm. Code 130.310, but need written clarification, as CPAPs are not specifically addressed. These devices and accessories are used to assist in breathing by patients who have breathing disabilities. They are not used to administer medicine.

Thank you for your attention to this matter. If you have any further questions you may contact our office between 8:00 am and 5:00 pm Monday through Friday.

DEPARTMENT'S RESPONSE:

Your letter correctly identifies the applicable regulation, 86 Ill. Adm. Code 130.310 (Food, Drugs, Medicines and Medical Appliances). Those products that qualify as medicines, drugs, or

medical appliances are taxed at the reduced tax rate of 1% plus applicable local taxes. Those that do not qualify for the low rate are taxed at the State rate of 6.25%, plus applicable local taxes.

In order for an item to qualify as a medical appliance the item must be intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. 86 Ill. Adm. Code 130.310(c). Your letter does not provide any descriptions of the enumerated devices, how they function or the intended use of the devices by the manufacturers of the devices.

You state in your letter that “[t]hese devices and accessories are used to assist in breathing by patients who have breathing disabilities.” However, the Department cannot rely on this statement alone to determine whether or not the items in question qualify for the low rate of tax. The items listed in your inquiry may qualify for the low rate of tax if they are part of a system used in breathing by patients who have breathing disabilities and are intended by their manufacturer for use in directly substituting for a malfunctioning part of the body.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department’s Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk